

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF MONEY MAKER RESEARCH PRIVATE LIMITED

In respect of:

Sr. No.	Name of the Noticee	PAN	SEBI Registration Number/ DIN
1.	Money Maker Research Pvt. Ltd.	AAHCM6434A	INA000001415
2.	Chandni Paryani	AXKPP7326H	07472012
3.	Abhisekh Tiwari	APQPT5692C	08251068
4.	Shashank Mishra	AYKPM8814C	03639112
5.	Tanveer Ahmed	AKMPA6142P	03639119
6.	Neelesh Kumar Tripathi	AMNPT0754F	07783501
7.	Devendra Kumar Tripathi	AUTPD0629H	07783509
8.	Nimish Shrivastav	CQMPS6113E	07783564
9.	Amita Jain	AMMPJ1198E	07871401
10.	Divya Sharma	BUVPS1494N	07872373

Final Order in the matter of Money Maker Research Private Limited

Background

1. The present proceeding is arising out of an *ex-parte ad interim* order dated January 22, 2021 (hereinafter referred to as "**Interim Order**") issued by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), against the Money Maker Research Pvt. Ltd. (hereinafter referred to as "**Company / Money Maker / Noticee no. 1**") and its Directors. The *Noticee no. 1* is registered as an Investment Adviser (hereinafter referred to as "**IA**"), under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations, 2013**"), having Registration no. INA000001415, with effect from April 01, 2014. The *Noticees no. 2 to 10* were the Directors of the *Noticee no. 1*.

2. An inspection of the *Noticee no. 1* was conducted by SEBI for the period of April 01, 2018 to March 31, 2019 (hereinafter referred to as "**inspection period**"), so as to examine the compliance of various regulatory stipulations laid down for an IA under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act, 1992**"), *IA Regulations, 2013*, circulars/guidelines frame thereunder, KYC requirements, etc. Based on the inspection so conducted by SEBI, certain violations of provisions of securities laws were found to have been *prima facie* committed by the *Noticee no. 1*, pursuant to which an *Interim Order* came to be passed. The said *prima facie* findings, as recorded in the *Interim Order* are briefly mentioned herein below:

- (a) *Noticee no. 1* has sold multiple subscriptions of its financial products, to clients who have indicated in their Risk Profiling Questionnaire (RPQ) that they have no experience of trading in such financial products;
- (b) On a sample basis, it was observed that for certain clients, *Noticee no. 1* had received advisory fees from the clients even before it communicated the risk profile to such clients;
- (c) It was also observed that *Noticee no. 1* had sold products/services which had 'High Risk' features to 'Medium / Low Risk' profile clients;

- (d) It was *prima facie* observed that, *Noticee no. 1* had collected unreasonable / unfair fee by charging fees disproportionate to the annual income of the clients, disproportionate to the proposed investment intended to be taken by the clients in their risk profiling form, by locking-in the clients by charging advance fee from them for sale of products and also by charging arbitrary and unreasonable amounts of fees from the same clients in the name of offering them two products/ services having different names, but both the products essentially bearing the same features.
- (e) *Noticee no. 1* has not conducted the risk profiling of its clients as laid down in the provisions of the *IA Regulations, 2013*.
3. As per the *Interim Order*, the afore-stated acts and omissions on the part of the *Noticees* are found *prima facie* to be in violation of the following provisions:
- (a) Section 12A(a), (b) and (c) of the *SEBI Act, 1992*, and regulations 3 (a), (b), (c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "*PFUTP Regulations, 2003*")
- (b) regulation 15 (1), 15 (9), 16 (e), 17 of *IA Regulations, 2013* and the Clauses 1, 2, 4, 5, 6, 8 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of *IA Regulations, 2013*.
4. Additionally, as per the *Interim Order*, *Noticees no. 2 to 10* were also found to be in violation of the Clause 9 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of *IA Regulations, 2013*
5. Based on the information collected during the inspection and the findings about various wrong doings as have been observed in the *Interim Order*, certain directions were issued against *Noticee no. 1* and its Directors (*Noticees no. 2 to 10*), vide the aforesaid *Interim Order* which are *inter alia*, as follows:

Qua *Noticees no. 1 to 3*

- (a) *not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, in any manner whatsoever whether directly or indirectly;*
- (b) *to cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever;*
- (c) *not to divert any funds collected from investors, kept in bank account(s) and/or in their custody;*
- (d) *to provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order;*
- (e) *not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in the name of Money Maker, including money lying in bank accounts except with the prior permission of SEBI;*
- (f) *to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, in relation to its investment advisory activity or any other activity in the securities market;*
- (g) *to remove all contents from website immediately and display only the content in its website that SEBI has passed interim order dated January 22, 2021, reproducing the directions mentioned in paragraph 35 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this order.*

Qua Noticees no. 4 to 10

- (h) *not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, directly or indirectly, in any manner whatsoever, till further directions.*

Service of Interim Order and hearing

6. It is noted that the *Interim Order* was served on all the *Noticees*. *Noticee no. 1* vide its letters dated February 15, 2021, February 28, 2022 has submitted replies to the *Interim Order*. However, apart from *Noticee no. 1*, no other *Noticee* has submitted any reply to the *Interim Order*. I also note that the *Noticee no. 1* had, sought inspection of certain documents which has been duly provided by SEBI on March 22, 2021. Subsequently, in conformity with the principles of natural justice, an opportunity of personal hearing was provided to them, by scheduling the personal hearing on March 08, 2022. However, vide email dated March 07, 2022, *Noticee no. 1* sought an adjournment, hence another opportunity of personal hearing was provided on July 01, 2022, for which the hearing notice was duly served upon them. On the scheduled date, a common Authorised Representative (AR) appeared on behalf of all the *Noticees (no. 1 to 9)* and made oral submissions on the same lines of the submissions made in the reply filed by the *Noticee no. 1*. Though no separate reply has been received from *Noticees no. 2 to 9*, I note that they have adopted the submissions made on behalf of the *Noticee no. 1*. In this regard, vide email dated September 08, 2022, *Noticee no. 3* has also requested SEBI to consider replies submitted by *Noticee no. 1* as replies on behalf of other *Noticees* in the matter i.e. *Noticees no. 2 to 9*. I note that no one appeared on behalf of *Noticee no. 10* and no request of adjournment was received from *Noticee no. 10*. Therefore, I am constrained to deal with the matter on merit based on the material available on record with respect to all the *Noticees* including *Noticee no. 10*. Details of servicing of the *Interim Order*, hearing notices and details of replies received from the *Noticees* are tabulated below:

Table no. 1

<i>Notice e No.</i>	<i>Names of the Noticee</i>	<i>Interim Order Delivery status (Delivered / Undelivered)</i>	<i>Date of Newspaper Publication and last known address of Noticee on which delivery of Interim Order through SPAD/ Affixture was attempted</i>	<i>Whether Inspection sought and provided (Y/N), Date of Inspection</i>	<i>Hearing notice delivery status (Delivered / Undelivered)</i>	<i>Date of Newspaper Publication and last known address of Noticee on which delivery of hearing notice through SPAD/ Affixture was attempted</i>	<i>Date of reply</i>
1.	Money Maker Research Pvt. Ltd.	Return Undelivered	No, as reply was received from the entity on February 15, 2021 i.e. prior to Newspaper Publication.	Yes 22-03- 2021	No	22-02-22, TOI- Indore and Raj Express - Indore Address at which delivery was attempted: 401, 4th Floor, Omega Tower 32, Mechanic Nagar Extension, Scheme No. 54, Vijay Nagar Indore, Madhya Pradesh - 452010	February 15, 2021, February 28, 2022 and July 12, 2022
2.	Chandni Pariyani	Delivered	22-02-22, TOI-Indore and Nai Dunia - Indore Address at which delivery was attempted: 109-A, Alankar Palace Colony, Keshar Bagh Road, Indore, Madhya	N	Yes	-	-

			Pradesh - 452009				
3.	Abhisekh Tiwari	Delivered	22-02-22, TOI-Indore and Nai Dunia – Indore Address at which delivery was attempted: 295/B, Amrit Palace, Nipaniya, Indore, Madhya Pradesh - 452010	N	No	22-02-22, TOI-Indore and Raj Express – Indore Address at which delivery was attempted: 295/B, Amrit Palace, Nipaniya, Indore, Madhya Pradesh - 452010	-
4.	Shashank Mishra	Delivered	22-02-22, TOI-Indore and Nai Dunia – Indore Address at which delivery was attempted: 88, AR Avenew, Satya Sai, Indore, Madhya Pradesh - 452010	N	No	22-02-22, TOI-Indore and Raj Express – Indore Address at which delivery was attempted: 88, AR Avenew, Satya Sai, Indore, Madhya Pradesh - 452010	-
5.	Tanveer Ahmed	Delivered	22-02-22, TOI-Indore and Nai Dunia – Indore Address at which delivery was attempted: 202, Manbhavan Plaza, Bank Colony, Opposite Dashera Maidan Indore, Madhya Pradesh - 452001	N	No	22-02-22, TOI-Indore and Raj Express – Indore Address at which delivery was attempted: 202, Manbhavan Plaza, Bank Colony,	-

						Opposite Dashera Maidan Indore, Madhya Pradesh - 452001	
6.	Neelesh Kumar Tripathi	Delivered	22-02-22, TOI-Indore and Nai Dunia – Indore Address at which delivery was attempted: 20/1, Bhagyashri Colony, Near Business Park, Vijay Nagar, Indore, Madhya Pradesh – 452001	N	No	22-02-22, TOI- Indore and Raj Express – Indore Address at which delivery was attempted: 20/1, Bhagyashri Colony, Near Business Park, Vijay Nagar, Indore, Madhya Pradesh - 452001	-
7.	Devendra Kumar Tripathi	Delivered	22-02-22, TOI-Indore and Nai Dunia – Indore Address at which delivery was attempted: 202, Manbhavan Plaza Annapurna Road, Indore, Madhya Pradesh - 452001	N	No	22-02-22, TOI- Indore and Raj Express – Indore Address at which delivery was attempted: 202, Manbhavan Plaza Annapurna Road, Indore, Madhya Pradesh - 452001	-
8.	Nimish Shrivastav	Delivered	No	N	Yes	-	-

9.	Amita Jain	Delivered	22-02-22, TOI-Indore and Nai Dunia – Indore Address at which delivery was attempted: 203, Salimar Malwa Enclave Society, Block 5, A.B. Road, Near Lotus Electronics, C-21 Mall, Indore, Madhya Pradesh - 452001	N	No	22-02-22, TOI- Indore and Raj Express – Indore Address at which delivery was attempted: 203, Salimar Malwa Enclave Society, Block 5, A.B. Road, Near Lotus Electronics, C-21 Mall, Indore, Madhya Pradesh - 452001	-
10.	Divya Sharma	Delivered	22-02-22, TOI-Indore and Nai Dunia – Indore Address at which delivery was attempted: 128, Rajaswgram, Near Vyanktesh Mandir, Chhatri Bagh, Indore, Madhya Pradesh - 452007	N	Yes	-	-

Submission of the Noticees

7. The arguments advanced on behalf of the *Noticees no. 1 to 9* through their written as well as oral submissions are summarised herein below:

- (a) The adverse findings in the *Interim Order* are based on the inspection conducted by SEBI for the period 01.04.2018 to 31.03.2019. However, post inspection, no letter of deficiency was issued or clarifications were sought

by SEBI. In this regard, regulation 27 of the IA Regulations, 2013 has been referred to which states that “*The Board may after consideration of the inspection report and after giving reasonable opportunity of hearing to the investment advisers to its authorised representatives, issue such directions as it deems fit in the interest of securities market.*”

(b) *Noticee no. 1* has stopped registering new clients since August 2020.

Suitability of advice given to Clients

(c) *Noticee no. 1* has always sold the products to the clients as per the Risk profiling and suitability assessment, in support of which the following explanations have been offered, confronting different allegations made in the *Interim Order*: -

Multiple subscriptions of derivative products/ services sold to clients with no experience of such financial products

- i. The allegation in the *Interim Order* pertaining to selling of derivatives products to Mr. Munavath's despite his no experience in Commodity / Derivative trading is factually incorrect. As per the RPQ, the aforesaid client was having experience of 1-3 years and was categorized under the “High Risk Category”. Further, the said RPQ was inspected by SEBI during the inspection of *Noticee no. 1* and nothing adverse has been brought to its notice.
- ii. The allegation pertaining to selling of derivatives products to Mr. Supriyo Nandy despite his no experience in Commodity / Derivative trading is also factually incorrect. As per the RPQ communication dated 15.06.2018, the aforesaid client was having experience of more than 3 years and with regard to market experience, he had mentioned his experience as “Extensive” and accordingly, the client was categorized under the “High Risk Category”. Further, the said RPQ dated 15.06.2018 forms a part of the documents inspected by SEBI

during the inspection and again, nothing adverse or objectionable was brought in the report or furnished to the *Noticee no. 1*.

- iii. The RPQ for Mr. Mahaveer Prasad Bijarania and Mr. Ashok Bhadange mention that the clients belong to “High Risk Category” and the services were offered and were accepted by clients as per the details in RPQ.

Advisory Services sold prior to communication of Risk Profiling

- iv. As per regulation 16 (e) of the *IA Regulations, 2013*, “risk profile of the client is communicated to the client after risk assessment is done” and *Noticee no. 1* has always acted in due compliance of the relevant provision.
- v. Multiple RPQ forms were available of various clients because of some addition of data. As *Noticee no. 1* had provided only last / final RPQ form to SEBI Inspection team, SEBI would have inadvertently perused the last / final RPQ form and, *inter alia*, held that Advisory services were sold to such clients prior to communication of Risk profiling.
- vi. Regarding inference drawn in the *Interim Order* in case of Mr. Bhupen Suresh Vagal stating that although fees were collected from him on 05.07.2018 and service was started on 06.07.2018, however, RPQ was sent on 11.07.2018, it is submitted that the RPQ was sent only on 05.07.2018.
- vii. Regarding inference drawn in the *Interim Order* that fees were collected from Mr. Supriyo Nandy on 16.06.2018, and service was started on 18.06.2018, however, RPQ was sent to him on 19.06.2018, it is submitted that the RPQ was sent to the aforesaid client on 16.06.2018.

High-risk product/ service sold to client with Moderate/ Low risk appetite

- viii. *Noticee no. 1* has sold the products to the clients as per the risk profiling of the clients. Only on the instructions of Mr. Bhupen Suresh Wagal, the services of HNI Options were provided to him.

Unreasonable / Unfair Fees Charged from Clients

- (d) *Noticee no. 1* has always charged fees to its clients on a reasonable basis which was based on a proper prescribed fee structure. Following is reply to the allegations in the *Interim Order*:

Service fees charged are disproportionate to the annual income/ proposed investment

- i. No rule has been prescribed by SEBI as to what is the maximum amount that can be charged from a customer by an IA. Further, *Noticee no. 1* has charged the fees to its clients only after due disclosure of the same on mutual consent basis and no complaint of charging unreasonable fee has been raised by any investors.
- ii. Sometimes a client subscribes to more than one service or a service for longer tenure, which results into higher service charges.

Locking in clients by collecting advance service fee

- iii. Certain clients intend to take services for 1 month and on the start of the services, after being satisfied, opt to increase the duration of the service, Therefore, multiple bills are generated which was inadvertently considered by SEBI as locking in of clients by collecting advance fees.
- iv. Further, the *Noticee no. 1* has refunded fees to certain clients who did not want to continue services. Details of the same are tabulated below:

Table no. 2

Sr. No.	Date	Client Name	Settled amount
1	03-Apr-18	Rakumar Nagpal	150000
2	09-Jul-18	Vikrant Kumar	40120
3	19-Sep-18	Rakesh Walia	40000
4	06-Dec-18	Raj Kumar Mathur	25000
5	10-Dec-18	Supriyo Nandy	345426
6	12-Dec-18	Raj Kishore Sharma	280300
7	01-Jan-19	Verindra Singh Virdi	15000
8	07-Mar-19	Vijay Soman	1600000
9	31-Mar-19	Shamal Kadam	75000

Selling clients two products/ services having different names but the same features

- v. Customized package on the basis of need of the client had resulted into overlapping of services offered under various plans / packages. *Noticee no. 1* has submitted the differences between various services offered under different heads, which have been discussed in the later paragraphs in this Order.

Risk profiling of clients

- (e) The client and the *Noticee no. 1* enter into a relationship only after the payment is received from the client. Prior to the payment by client, in many of the cases the clients do not easily share their email ids and become cautious after the risk profile is sent to them. Such practice used to create a prejudice in the mind of the clients and hence in order to comply with the requirement of SEBI as well as for the ease of the clients, *Noticee no. 1* first

used to ask questions mentioned in the risk profile form over telephone following which the risk profiling score is communicated to them.

Roles of other Noticees Other submissions

(f) Following has been submitted by *Noticee no. 1* in respect of role of other *Noticees*:

- i. *Noticee no. 2* and *3* were introduced as Directors of *Noticee no. 1* with effect from 20.03.2019 and 01.09.2019 respectively. Therefore, the inferences drawn which respect to the inspection period are not applicable on them.
- ii. *Noticee no. 4* and *5* have resigned as Directors of *Noticee no. 1* with effect from 08.07.2017. Therefore, the findings with regard to of the inspection period are not applicable on them.
- iii. *Noticee no. 6* was the HR Executive in *Noticee no. 1* at the relevant point of time and used to do work related to Human Resource Management. *Noticee no. 7* was the Admin Executive and was responsible for the works related to housekeeping management, water supply, etc. Similarly, *Noticee no. 8* was the HR manager and was responsible for PF, ESI and salary structure of the employees. Further, *Noticee no. 8* was handling client queries and service related issues.
- iv. *Noticee no. 1* has also referred to the observations made in the SEBI order dated 28.05.2021 in the matter of *Tatia Global Venture Limited* regarding introduction of vicarious liability of directors for civil breach/ contravention by the company.

Other submissions

(g) As on 30.06.2022, there are 18 complains pending against the *Noticees*. Majority of the complaints were received during the Covid period and only

some complaints pertain to the period prior to Covid. *Noticees* are in the process of resolving the same.

- (h) Regulation 4 (s) of the *PFUTP Regulations, 2003*, which was amended on 01.02.2019 relates to “mis-selling of securities or services relating to securities market”. However, prior to the said amendment i.e. before 01.01.2019, it read as “*mis-selling of units of mutual fund scheme.*” Since, the inspection period is from 01.04.2018 to 31.03.2019, the alleged violation is not applicable on the *Noticees*
- (i) There is no purchase/ sale/ dealing in securities by the *Noticees*. Therefore, the *PFUTP Regulations, 2003* are not applicable on the *Noticees* keeping in view of the facts of the case.
- (j) *Noticee no. 1* desire to surrender the certificate of registration and has made an application to SEBI by a letter dated 12.07.2022.
- (k) *Noticee no. 1* has placed reliance on the following judicial observations w.r.t. inspection of books of accounts / documents supposed to be done by SEBI and to further support the aforesaid arguments made by the *Noticees*, which are as follows: -
 - i. Hon’ble SAT in the matter of *Religare Securities Ltd. vs. SEBI (Appeal no. 23 of 2011)*;
 - ii. Hon’ble SAT in the matter of *UPSE Securities Ltd. vs. SEBI (Appeal no. 109 of 2011)*;
 - iii. Hon’ble SAT in the matter of *DSE Financial Services Ltd. vs. SEBI (Appeal no. 153 of 2012)*;
 - iv. Hon’ble SAT in the matter of *Piramal Enterprises Ltd. vs. SEBI (Appeal no. 23 of 2011)*
 - v. SEBI Adjudication Order dated 22.05.2017 in the matter of *IFCI Financial Services Ltd.*;

vi. SEBI Adjudication Order dated 26.02.2017 in the matter of *Marfatia Stock Broking Ltd.*

(l) It is no more *res integra* that SEBI has power to pass ex-parte interim orders under Section 11 and 11 (B) of the *SEBI Act, 1992*. Further, the *Interim Order* has been passed without providing an opportunity of being heard, hence it has led to violation of principles of natural justice. In this regard, reference is made to the following judgements passed by the Hon'ble Securities Appellate Tribunal (for short "**SAT**"):

- i. *Cameo Corporate Services Limited vs. SEBI (Appeal no. 566 of 2019);*
- ii. *North End Foods Marketing Pvt. Ltd. vs. SEBI (Appeal no. 80 of 2019);*
- iii. *Pancard Clubs Ltd. vs. SEBI (decided on 17.09.2014);*

Consideration of issues

8. I have carefully perused and considered the findings as recorded in the *Interim Order* and have also considered the above noted submissions made by the *Noticees*. After considering the charges levelled against the *Noticees* as spelt out in the *Interim Order*, it leads me to examine of the following issue:

- *Whether the acts of the Noticees as imputed in the Interim Order, have resulted in the violation of the provisions of SEBI Act, 1992 read with IA Regulations, 2013 and PFUTP Regulations, 2003 while providing the services related to Investment Advisory.*

9. Before adverting to deal the aforesaid issue, it is apposite to refer to the relevant provisions of law, the violations of which have been alleged against the *Noticees* in the *Interim Order*. Such provisions are reproduced herein for ready reference:

SEBI Act, 1992

"Section 12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"

IA REGULATIONS, 2013:

Regulation 15(1) *An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.*

Regulation 15(9) *An investment adviser shall abide by Code of Conduct as specified in Third Schedule:*

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[See sub-regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. **Honesty and fairness:** *An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.*
2. **Diligence:** *An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.*
3.

4. **Information about clients:** An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.
5. **Information to its clients:** An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.
6. **Fair and reasonable charges:** An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board, if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.
7.
8. **Compliance:** An investment adviser including its representative(s) shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.
9. **Responsibility of senior management:** The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

Regulation 16: Risk profiling:

Investment adviser shall ensure that:

- (a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including (i) age; (ii) investment objectives including time for which they wish to stay invested, the purposes of the investment; (iii) income details; (iv) existing investments/ assets; (v) risk appetite/ tolerance; (vi) liability/borrowing details.
- (b) it has a process for assessing the risk a client is willing and able to take, including:
 - (i) assessing a client's capacity for absorbing loss; (ii) identifying whether client is unwilling or unable to accept the risk of loss of capital; (iii) appropriately

interpreting client responses to questions and not attributing inappropriate weight to certain answers.

...

(e) risk profile of the client is communicated to the client after risk assessment is done;

Regulation 17 Suitability:

Investment adviser shall ensure that, -

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(c) It understands the nature and risks of products or assets selected for clients;

(d) It has a reasonable basis for believing that a recommendation or transaction entered into: (i) meets the client's investment objectives; (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance; (iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

(e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss

PFUTP REGULATIONS, 2003

Regulation 2(1)(c):

“(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include –

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*
- (5) a representation made in a reckless and careless manner whether it be true or false;*
- (6) any such act or omission as any other law specifically declares to be fraudulent,*
- (7) deceptive behaviour by a person depriving another of informed consent or full participation,*
- (8) a false statement made without reasonable ground for believing it to be true.*
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

And “fraudulent” shall be construed accordingly ...”

Regulation 3. *No person shall directly or indirectly –*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

10. Before dwelling into the merits of the case, it is felt appropriate here to deal with the preliminary objections raised by the *Noticees*. I note that it has been contended by the *Noticees* that no emergent circumstances were existing necessitating issuance of *Interim Order* which has been passed without according personal hearing to the *Noticees*. In this regard, it is pertinent to mention here that the power to pass interim orders emanates from the Section 11 (4) r/w 11 B of the SEBI Act, 1992. By virtue of the said provision, either pending investigation/inquiry/examination or completion thereof, SEBI may take various actions as listed out therein, including the following:

“(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

.....

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.”

11. I observe that the *Interim Order* in the present case has been issued after conducting a *prima facie* analysis of facts unearthed during the inspection of the *Noticee no. 1* pertaining to its functioning as an investment adviser, which was perceived to be prejudicial to the interest of the investors. In exact terms, the *Interim Order* records that: *“It has already, prima facie, been found that many of the clients of Money Maker have been sold services without any consideration of their financial*

situation, investment objective and risk profiling. The selling of such plans goes against the customized advice which would be required to be given based on the investors' risk profile. This requirement of risk profiling goes to the very root of suitability of investment advice as clients are required to get the investment advice based on their risk profile. Exposing the existing clients to such advice, which has no co-relation to their risk profile, is against the interest of those investors. Thus, in order to prevent the existing as well as the prospective clients from getting such advice which has no co-relation to their risk profile, urgent steps need to be taken against Money Maker. Further, as discussed hereinabove, the very nature of the investment advisory activity being practiced by Money Maker and its Directors has been found to be, *prima facie*, fraudulent and in violation of the provisions of the PFUTP and IA Regulations. In view thereof, allowing Money Maker to continue its services to its clients, regardless of whether they have complained against Money Maker or not, would tantamount to allowing the, *prima facie*, fraudulent investment advisory activity to continue, which will be inimical to the interests of clients and will also be in contravention of what has been envisaged under the IA Regulations."

12. From the perusal of the *Interim Order*, it is observed that the conduct of Money Maker has been *prima facie* found lacking in compliance with the IA Regulations, 2013 and certain acts on its part have been observed to be in violation of provisions of the PFUTP Regulations, 2003. It is noted that though the *Notices* have asserted that the violations were not serious and could not be considered as sufficient warranting issuance of an *Interim Order*. However, I find that considering the findings as unearthed in the course of examination, it was incumbent on the part of SEBI to take necessary preventive as well as remedial measure in order to protect the interest of investors. The *Interim Order* has very aptly highlighted the lapses on the part of Money Maker which were not only *prima facie* in violation of laws but also raised serious concern over the ongoing conduct of its rendering services as a registered investment advisory which potentially endangered the interest of the investors to whom the *Notices* were rendering Investment Advisory Services. Therefore, such acts/omissions which were aggravating and adversely affecting the interest of its clients such needed to be urgently stopped by passing of

those *interim* directions. For illustration, it was noticed that *Money Maker* has sold multiple subscriptions of derivatives products / services to clients who were having no experience of such financial products and that too on multiple times, hence, such a business conduct of selling risky products to the innocent investors *prima facie*, was required to be prevented in the larger interest of investors. as any omission or delay in taking timely action would have further resulted in exposing those clients to various risks which was unsuitable to their profiles and was clearly detrimental to the growth of a healthy and robust securities market. In any event the findings in the *Interim Order* are not conclusive in nature and the provisions under Section 11(1), 11(4) read with 11B of the *SEBI Act, 1992* sufficiently provide for post decisional hearing and granting opportunities to the *Noticees* to defend the case which have been duly accorded to them to defend the adverse observations/findings made in the *Interim Order*. Under the circumstances, I am of the view that there were sufficient materials available on record with respect to the misconduct and various contraventions by *Money Maker*, warranting urgent interference in the affairs of *Money Maker* in the form of an *Interim Order* and the contention of the *Noticees* that, there were no emergent circumstances for the *Interim Order* to be passed, does not deserve any further consideration.

13. At this stage, it is pertinent to note that in a matter of *Dr. Shivinder Mohan Singh vs. SEBI* (Date of Decision: December 24, 2020), the Hon'ble SAT was confronted with a similar plea taken by the appellant therein stating that the interim order could be passed only if compelling circumstances existed. The Hon'ble SAT, while rejecting the said argument, have recorded that: "...we find that the appellant did not challenge the ex-parte interim order dated March 14, 2019. Nothing prevented him from filing an appeal. ..." In the present case also, there were reasons sufficient enough warranting invocation of the powers to issue *interim* directions against *Money Maker* so as to protect the interest of the investors of securities market and to prevent the *Noticees* from further putting the investors into unwarranted risks by way of its misleading advisory services.

14. Regarding the contention of the *Noticees* that the *Interim Order* has been passed without hearing them which is in flagrant violation of principles of natural justice and therefore, the same deserves to be set aside, I have recorded above that the provisions under the *SEBI Act, 1992* duly empower SEBI to pass such *Interim Order* if there is a need for passing such an order without loss of any time, in the interest of market and to protect the interest of investors. Therefore, keeping in view the urgency of the matter on hand to as to immediately stop an unlawful activity from continuing further to put the interest of the investors into serious risk (as in the present case), granting of an opportunity of hearing is not essential at the stage of passing of such order. The controversy about SEBI not granting a personal hearing at the stage of passing of interim order has come up for consideration and scrutiny before the judicial forum time and again on several occasions. Based on the findings recorded by the Hon'ble Courts, it is now settled that granting of personal hearing at the time of passing of an *ex parte* order at interim stage can be dispensed with primarily because of the very urgency of purpose inherent in such an order. It has been held in a catena of judgments that even grant of post-decisional hearing is sufficient compliance with the principles of natural justice. Some of such judgments and the relevant findings therein are quoted below for reference and reliance:

- (a) Hon'ble Supreme Court in the matter of *Liberty Oil Mills & Others vs. Union of India & Other* (1984) 3 SCC 465 have *inter alia* observed that: "*It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard*

at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party have, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request."

- (b) Similarly, in *SEBI vs. Alka Synthetics Ltd* (1999) 19 SCL 460, the Hon'ble Gujarat High Court has observed that SEBI is empowered to take all interim measures and issue direction for protecting the interest of investors and to regulate securities market. While issuing such measures, SEBI need not give pre-decisional hearing at the time of issuing direction of interim nature. The said observations have been approved in the matter of *Anand Rathi & Others vs. SEBI* [2002 (2) Bom CR 403], wherein the Hon'ble Bombay High Court has observed: "...31. It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded...."
- (c) Further, the Hon'ble High Court of Judicature for Rajasthan at Jaipur had also an occasion to deal with the issue of requirement of post-decisional hearing in the matter of *M/s. Avon Realcon Pvt. Ltd. & Ors Vs. Union of India & Ors* (D.B. Civil WP No. 5135/2010 Raj HC). In the said matter, the Hon'ble High Court while approving the measures taken by SEBI without granting pre-decisional hearing recorded as follows: "...Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the

light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. ... The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act.

15. In the context of the present proceedings, it may be noted that the proviso to Section 11 (4) mandates that for passing of the interim order, SEBI can, either before or after passing such an order, provide an opportunity of hearing to the persons concerned. As noted earlier, the *Notices* herein have been duly provided the opportunity of personal hearing, which has also been availed by them. Under the circumstances, as the extant law enables SEBI to pass *interim* directions in an *ex parte* manner in the interest of the investors and after passing the said interim order, opportunities for personal hearing should be provided to the *Notices*, which has been duly provided and the same has also been availed by the *Notices* to present their case, the objection of the *Notices* with respect to violation of principles of natural justice is not tenable and deserves to be rejected being *sans* any merit.

16. The *Notices* have also referred to the regulation 4 (s) of the *PFUTP Regulations, 2003* and have stated that the aforesaid regulation which states “mis-selling of securities or services relating to securities market” was amended on 01.02.2019 and before the amendment, the provision was “mis-selling of units of mutual fund scheme.” In this regard, they have contended that since, the inspection period is from 01.04.2018 to 31.03.2019, the alleged violations against them about mis-selling of securities or services is not applicable. In this regard, it is however important to record here that the *Interim Order* has nowhere alleged the violation of regulation 4 (s) of the *PFUTP Regulations, 2003* by the *Notices*. Therefore, the contention does not require any consideration.

17. I shall now evaluate the indictments made against the *Notices* in the *Interim Order* on merit, based on the facts and circumstances as adduced in the *Interim Order*. To begin with, I reproduce the observations made in the *Interim Order* with respect to the *Noticee no. 1 (Money Maker)*:

- (a) *Money Maker* has not provided investment advice to its clients as per the provisions of the *IA Regulations, 2013*;
- (b) *Money Maker* has not charged fair and reasonable fee from its client as per the provisions of the *IA Regulations, 2013*;
- (c) *Money Maker* has not carried out risk profiling of its clients as required in terms of the provisions of the *IA Regulations, 2013*.

A. Suitability of advice given to Clients

Multiple subscriptions of derivative products/ services sold to clients with no experience of such financial products

18. I note that the *Interim Order* has recorded that *Money Maker* has sold multiple subscriptions of its financial products to clients who have indicated in their RPQ that they have no experience of trading in such financial products, hence it is observed in the *Interim Order* that the clients have not been provided investment advice in terms of their suitability as mandated under the provisions of the *IA Regulations, 2013*. Some instances of such miss-selling of risky products as recorded in the *Interim Order* are tabulated below:

Table no. 3

Sr. No.	Client Name	Date of on boarding of Client (date when RPQ communicated to Client)	Experience in Commodity market / Derivatives (futures/ options / currency) as	Date when first derivative product/ service sold	Other derivative product/ service sold

			per RPQ		
1	Munavath Ravinder	March 27, 2018	Nil	April 10, 2018	<u>In April 2018</u> Revival Future @monthly Galaxy Future Service @Qly, Breakout Option @monthly, <u>From June 2018 – August 2018</u> Jobbers MCX@monthly, <u>In February 2019</u> Base Metal & Energy Pack @monthly.
2	Supriyo Nandy	June 19, 2018	Nil	June 27, 2018 (Min Max Express@ monthly)	Intraday Future @monthly (3 subscriptions in July 2018) HNI Future @monthly and Option Call & Put @monthly – 1 subscription each in July 2018
3	Mr. Mahaveer Prasad Bijarania	February 16, 2018	Nil	March 09, 2018 (Jobbers Future Pack)	Jobbers Future Pack, HNI Future, Galaxy Future Services, Breakout Option, Index Future, Galaxy Future

4	Mr. Ashok Bhadange	August 16, 2017	Nil	August 25, 2017	HNI Option
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19. I observe from the aforementioned table that the *Noticee no. 1* has sold investment advisory services pertaining to dealing in commodity and equity derivatives products (futures / options / commodities) to its clients who have in their RPQ specified 'Nil' experience in derivatives / commodity products. For instance, one client namely Munavath Ravinder, whose RPQ states no experience in commodity market / derivatives market (options / futures / currency) and was communicated to him on March 27, 2018, however, was introduced to investment services dealing in derivatives and commodity such as Galaxy Future Service@Qly, Breakout Option @monthly, Base Metal & Energy Pack @monthly, etc. from April 2018. With regard to the aforesaid specific instance, *Noticees* have submitted that as per the RPQ, Munavath Ravinder was having experience of 1-3 years and was categorized under the "High Risk Category" and therefore, the services of dealing in derivatives / commodity were sold to him. They have also contended that as per the RPQ communication dated 15.06.2018, Mr. Supriyo Nandy was having experience of more than 3 years and with regard to market experience, he had mentioned his experience as "Extensive" and accordingly, the client was categorized under the "High Risk Category" by the *Noticee no. 1*. Therefore, the services dealing in derivatives / commodity were sold to him as well. Similar contentions have been made by the *Noticees* for other clients like Mr. Mahaveer Prasad Bijarania and Mr. Ashok Bhadange.

20. In this regard, it is pertinent to note that per regulation 17(a) of *IA Regulations, 2013*, an IA has to ensure that investment advice is appropriate to risk profile of the client. Further, as per regulation 17(d)(iii) of *IA Regulations, 2013*, the IA should have a reasonable basis to believe that the client has the necessary experience and knowledge to understand the risks involved in the transactions. Similarly, as per regulation 17(e) of *IA Regulations, 2013*, an IA has to ensure that a recommendation given to client is consistent with client's experience, knowledge,

investment objective and risk appetite. It is clearly laid down in the provisions of *IA Regulations, 2013* that an IA should have a reasonable basis to believe that the clients are having necessary experience and knowledge to understand the risks of the products which are being sold to them. From the RPQs of the clients mentioned in the table no. 3 above, I note that clients, who did not have prior experience of dealing in derivative products/ services, have been, sold multiple subscriptions of different products/ services relating to dealing in derivatives / commodity by *Money Maker*. The submission that there is no guidance (*in the IA Regulations, 2013*) specifying providing the circumstances where under an investor could be sold a financial product relating to the derivative segment may appear to be impressive at first go, however, the very inbuilt character of the derivative segment that trading in derivatives involves high leverage and high risk does require a good experience in such products before a person is advised to commence trading in the segment. In the matter at hand, it is not disputed that clients who have just got enrolled to avail the services of the *Noticee no. 1* have been rendered advises prompting them to dealing in derivative segment immediately after their enrolment. Therefore, the argument of the *Noticees* that such clients were having experience in stock market is not of much assistance as the *Noticees* have not denied the veracity of the observations that such clients were not having experience in derivatives / commodity. From a conjoint reading of the provisions laid down in the *IA Regulations, 2013* and the fact that the clients who were sold the IA services for dealing in derivatives / commodity products were having no prior experience in dealing in such risky products, it can be safely deduced that the *Money Maker* has not acted with due skill, care, diligence and in the best interest of its clients while selling such sophisticated, leveraged & risky products/ services to its clients thereby disregarding the principal object of the *IA Regulations, 2013* i.e. to render advice to the investors keeping their interest as prime objective and for protecting their interest and not to earn profit in the form of terms of fees by rendering such unwarranted services to them.

Advisory Services sold prior to communication of Risk Profiling

21. The *Interim Order* has also recorded that *Money Maker* was taking payment from the clients for products/ services even before the risk profile was communicated to the clients. Details of such instances as recorded in the *Interim Order* are tabulated below:

Table no. 4

Sr. No.	Client Name	Date when RPQ sent to client	Date of collection of fee	Amount collected & type of advisory service	Start of service
1	Mr. Vinod Singh Negi	July 04, 2019, on 17:01 PM (KYC was digitally signed by Money Maker on July 04, 2019, at 19:36 PM)	July 04, 2019, at 13:46 PM	INR 11,800/- for 'Intraday Cash' service	July 05, 2019
2	Mr. Umesh Kumar Pandey	October 27, 2018	October 25, 2018	INR 1,55,000/-for 'Optional Positional @ yearly' service	October 26, 2018
3	Mr. Bhupen Suresh Vagal	July 11, 2018	July 05, 2018	INR 5,900/- for 'Intraday cash@ monthly' service	July 06, 2018
4	Mr. Supriyo Nandy	June 19, 2018	June 16, 2018	INR 3,540/- for 'Intraday Cash@monthly' service	June 18, 2018
			June 18, 2018	INR 12,980/- for 'Intraday Cash Bluechip@Qly' service	June 19, 2018

5	Mr. Vijay Soman	June 18, 2018	June 14, 2018	INR 5,900/- for 'Nifty Option@monthly' service	June 15, 2018
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22. With regard to the allegations pertaining to the clients mentioned at sr. no.1 and 2 (viz: - Mr. Vinod Singh Negi and Mr. Umesh Kumar Pandey) in the table above, as I can see, there is no dispute that there was a time difference between the time of sending the Risk Profiling and the time of collection of fees. I note that in case of Mr. Vinod Singh Negi, the fees were collected from the client by *Money Maker* on July 04, 2019, at 13:46 PM and the RPQ was sent to the client by *Money Maker* on July 04, 2019, on 17:01 PM and the KYC was digitally signed by *Money Maker* on July 04, 2019, at 19:36 PM. Therefore, the time difference between fees collection and communication of RPQ was 2 hours. The aforesaid fact has been admitted by the *Notices*. Similarly, in case of Mr. Umesh Kumar Pandey, it has been admitted by the *Notices* that the fee was collected from the client by *Money Maker* on October 25, 2018, however the RPQ was communicated to the client by *Money Maker* on October 25, 2018. With regard to the other clients mentioned at sr. no. 3, 4 and 5 (viz: - Mr. Bhupen Suresh Vagal, Mr. Supriyo Nandy and Mr. Vijay Soman), it has been submitted by the *Notices* that multiple RPQ forms were available in respect of various clients because of some additions of data. Since it was the last / final RPQ form was provided to SEBI Inspection team, SEBI would have inadvertently perused the last / final RPQ form and, *inter alia*, held that Advisory services were sold to such clients prior to communication of Risk profiling, whereas, in reality, the services were sold to such clients only after the Risk Profiling was communicated to the respective clients in support of which following details have been furnished:

Table no. 5

Client Name	Date when RPQ sent to client as per <i>Interim Order</i>	Date of collection of fee	Start of service	Response of the <i>Noticees</i>
Mr. Bhupen Suresh Vagal	July 11, 2018	July 05, 2018	July 06, 2018	Risk profiling was sent on 05.07.2018 and not on 11.07.2018, as mentioned in the Interim Order.
Mr. Supriyo Nandy	June 19, 2018	June 16, 2018	June 18, 2018	Risk profiling was sent on 15.06.2018 and not on 19.06.2018, as mentioned in the Interim Order.
		June 18, 2018	June 19, 2018	
Mr. Vijay Soman	June 18, 2018	June 14, 2018	June 15, 2018	Risk profiling was sent on 14.06.2018 and not on 18.06.2018, as mentioned in the Interim Order.

23. Having gone through the submissions of the *Noticees* and the supporting documents provided by them, I note that though a contention has been taken by the *Noticees* that the Risk Profiling was communicated to Mr. Vijay Soman on 14.06.2018, however, from the supporting documents (Annexure 14 to the reply dated 28.02.2022 and Annexure C to the reply dated 12.07.2022) submitted by them, it is observed that the Risk Profiling was communicated to Mr. Vijay Soman on 05.07.2022. Therefore, the argument that the Risk Profiling was actually communicated to Mr. Vijay Soman on 14.06.2018 is not found to be supported by any documentary evidence, hence the said claim is rejected. With regard to the observation that the risk Profiling was communicated to Mr. Supriyo Nandy on 15.06.2018 and not on 19.06.2018 (as mentioned in the *Interim Order*), I observe from the supporting documents (Annexure 10 to the reply dated 28.02.2022 and Annexure B to the reply dated 12.07.2022) submitted by the *Noticees* that the Risk Profiling was actually communicated to Mr. Supriyo Nandy on 16.06.2018. In this regard, it is further observed that the money was collected from the aforesaid client

on 15.06.2018 and hence, it becomes clear that the Risk profiling was communicated to the client subsequent to collection of fees from the said client. Similarly, for client Mr. Bhupen Suresh Vagal, the *Notices* have submitted that the Risk Profiling was communicated to the client on 05.07.2018. In this regard, I note from the submission (Annexure A to the reply dated 12.07.2022) of the *Notices* that the Risk Profiling was communicated to the Mr. Bhupen Suresh Vagal on 05.07.2018. I further note from the records available before me that the fee was collected from the aforesaid client on 05.07.2018. Therefore, the submission of the *Notices* that the Risk profiling was communicated to the clients before collection of the fees is not found to be factually correct, hence does not require any further consideration.

24. I note that as per regulation 17 of the *IA Regulations, 2003*, an IA has to ensure that the investment advice proposed to be rendered is appropriate to risk profile of the client and the same needs to be communicated to the client. However, from the discussions above, it is observed that *Money Maker* has sold its advisory products/ services and collected fees from the clients even a few hours / days before it has communicated the risk profile to its clients. Consequently, the clients did not get an opportunity to verify whether his/ her risk category has been correctly arrived at or not, before they started availing and using the advisory services of the *Noticee no. 1* for the purpose of trading in securities. Under the circumstances, I found that the *Notices* have not acted with due skill, care, diligence, fairness and in the best interest of its clients while providing investment advice appropriate to the clients' risk profile and have also failed to seek information from its clients about their financial situation, investment experience and investment objectives before selling them IA services.

High-risk product/ service sold to client with Moderate/ Low risk appetite

25. The *Interim Order* has recorded an instance in which as per the risk profile that was communicated to a client vide email dated 11.07.2018, the said client's (Shri **Bhupen Suresh Vagal**) risk category was shown as "Moderate", however, he

was sold the product/ service “HNI Option@monthly” on July 27, 2018, and on August 22, 2018 by the *Noticee no. 1*, which is categorised as a “High-risk category” product/ service. *Interim Order* has observed that the aforesaid act of selling a product which is actually suitable for a client having a High Risk appetite, to a client having Moderate Risk appetite, is in violation of provision of Clauses 1, 2 and 8 of the Code of Conduct as mentioned in Schedule III read with regulation 15(9), regulation 15(1) and Regulation 17 of *IA Regulations, 2013*.

26. Before I proceed further on the aforementioned allegation, it is important to mention here that the regulation 15 of the *IA Regulations, 2013* lays down that an investment adviser shall have an important role to play in a fiduciary capacity towards its clients and shall also abide by the Code of Conduct specified in the Third Schedule of the said regulations. It is further noted that the regulation 16 (a) of the *IA Regulations, 2013* imposes an obligation on the registered IA to seek necessary information from its clients, which is necessary for the purpose of rendering the service of investment advice. The said regulation also lists out certain parameters, information pertaining to which needs to be first gathered by the investment adviser from his/its prospective clients, before indulging in the act of providing any investment advice to those clients for investment in securities. The said parameters include age, investment objective, income details, risk tolerance etc. Further, regulation 16 (b) of the *IA Regulations, 2013* stipulates that the investment adviser shall have a due process in place to assess the risk that a client is willing and able to take, before the process of rendering advise commences. After assessment of the risk tolerance of respective clients, the investment adviser needs to ensure that any investments for which advice is to be provided to the clients, is appropriate and proportionate to the risk profile of the corresponding client. One can appreciate that the task of risk profiling of the clients and selection of the appropriate investment products suitable to the risk profile of the respective clients is a critical aspect of investment advisory services that needs to be rigorously complied with by every investment adviser in letter and spirit.

When the risk profiling of a prospective investor indicates that he is a moderate risk taking person, the same is sufficient to indicate that his risk tolerance may not be equated with an investor who is willing to take more risk in pursuit of greater returns. It is noted that the *Noticee no. 1* has been found to have sold products/services package to Mr. Bhupen Suresh Wagal which were not commensurate with the investment need and investment appetite of the aforementioned client. In my opinion, the acts of selling a product, which as per the classification done by the *Noticee no. 1* was suitable for clients belonging to High Risk category a low risk taker investor, is a gross disregard of the assessed risk tolerance level of the investor. Such acts point to the fact that the *Noticee no. 1* acted in defiance of the rules of the game as stipulated in detail in the *IA Regulations, 2013* read with the code of conduct as specified under Third Schedule thereunder, and did not think about the actual risk appetite and actual requirements of its clients before advising them to deal with highly risky products in securities market. It has been contended that the *Noticee no. 1* has sold the services of 'HNI Options' to Mr. Bhupen Suresh Wagal on his instructions and therefore, no wrongdoings can be observed on the part of *Noticee no. 1* in this regard. However, I note that no documentary evidence has been submitted in support of such a claim that the "High risk" product was sold to the client with "Moderate" risk appetite at the insistence of the client himself and therefore, such a bald assertion that the said high risk product was sold with the consent and instruction of the client is not found to be established by any verifiable evidence so as to exonerate the *Noticees* from the observations made in the *Interim Order*. In my view, the said claim is nothing but an afterthought event to evade the outcome of this proceeding and in the absence of any supporting evidence such a specious claim is liable to be rejected in *limine*.

27. From the above, it can be said that the acts of the *Noticee no. 1* was not honest and fair in its dealing with its clients while rendering IA services to them. The *Noticees* have not offered any acceptable justification for (a) selling multiple

subscriptions of derivative products/ services sold to certain clients who had no experience of such financial products; (b) selling advisory services even prior to communication of Risk Profiling to the clients and (c) selling high-risk product/ service to a client with Moderate/ Low risk appetite as narrated above. As stated earlier in this Order, an Investment Adviser is under a statutory as well as fiduciary obligation to sell only those products which are conducive to the risk profile of the client so that the client is in a position to bear the risk that is inherent in the said product. However, in this case, there is an instance, where it has been found that the *Noticee no. 1* has indulged in selling products that is not suitable as to the client per the risk assessment of the client made by the *Noticee no. 1*. Therefore, it is clear that the interests of the investors have been compromised in the whole process with the sole motive to increase the revenue of the *Noticee no. 1* even at the cost of mis-selling various investment products to different clients regardless of their risk appetites and levels of risk tolerance. In view of the above discussion, I observe that the said acts of misconduct and breach of trust on the part of the *Noticee no. 1* clearly demonstrate that *Money Maker* and its Directors (*Noticees no. 2 to 10*) have not acted fairly & transparently towards their clients. Consequently, the acts committed by the *Noticees* as discussed above are found to be in violation of Clauses 1, 2, 4 and 8 of the Code of Conduct as provided under Third Schedule read with regulation 15 (9), regulation 15 (1) and regulation 17 of the *IA Regulations, 2013*.

B. Unreasonable / Unfair Fees Charged from Clients

Service fees charged are disproportionate to the annual income/ proposed investment

28. The *Interim Order* has alleged that the *Noticee no. 1* has charged service fees disproportionate to the annual income of / proposed investment to be made by the clients. Details of such instances as recorded in the *Interim Order* are tabulated below:

Table no. 6

Sl. No	Name of client	Fees received from client (INR)	Annual income as per RPQ (INR)	Proposed investment by client as per RPQ (INR)
1	Mr. Aman Mittal	1,73,312/-	3-5 lakhs	< 1 lakh
2	Ms. Shamal Kadam	2,94,001/-	< 3 lakhs	< 1 lakh
3	Mr. Vijay Soman	19,47,203/-	3-5 lakhs	< 1 lakh
4	Mr. Mahaveer Prasad Bijarania	4,35,752/-	5-10 lakhs	< 1 lakh
5	Mr. Rakesh Kumar B	5,90,002/-	3-5 lakhs	1-3 lakh
6	Mr. Munavat Ravinder	2,59,165/-	5-10 lakhs	< 1 lakh
7	Mr. Swaminathan Karthik	79,301/-	< 3 lakh	< 1 lakh
8	Mr. Suprio Nandy	3,45,426/-	-	< 1 lakh

29. With regard to the aforesaid allegation, *Notices* have, inter alia, contended that no rule has been prescribed by SEBI as to what the maximum amount of fee that can be charged from a customer by an IA, so as to be held as a reasonable fee. It has been further stated that it has charged the fees to its clients only after due disclosure of the same. They have further submitted that since a client sometimes subscribes to more than one service or a service for longer tenure, the same results into higher service charges. It has been submitted that the above fees are not a one-time service charge but is charged over the period and therefore, the observation gathered at the first instance giving an impression of charging disproportionate fees is fallacious. At this juncture, it is important to mention here that clause 6 of the Code of Conduct as specified under Third Schedule of the *IA Regulations, 2013* mentions the following:

“Fair and reasonable charges:

An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board, if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.”

30. I note that the clause 6 of the Code of Conduct as specified under Third Schedule of the *IA Regulations, 2013* states that an IA shall ensure to charge reasonable fees to its clients. I note that while no fixed standard can be prescribed to term whether the fee charged by an IA falls within the realm of “reasonableness”, it cannot also be stated that, the reasonableness of the fee charged by an IA cannot be judged at all. The *IA Regulations, 2013* provide for a principle based determination of fee by an IA indicating that such fees have to be fair and reasonable and any fees charged by an IA it considered unreasonable, the same can be pointed out as a violation of the Code of Conduct. What is reasonable in a particular circumstance may be the outcome of several competing factors which are relevant for such determinations, such as income, source of income, proposed investment, investment horizon, risk appetite of the client, etc. In the instant case, as seen from the table above, I note that *Interim Order* has observed that *Noticee no. 1* has charged service fees to its clients which is disproportionate to their annual income as well as to the investment proposed by the client as filled in by him in the RPQ. For instance, a client namely Mr. Vijay Soman was sold services worth of more than INR 19 lakhs by *Noticee no. 1* during the period June 2018-December 2018, whereas his annual income and proposed investment in securities market as disclosed by him in RPQ were “INR 3-5 lakhs” and “less than INR 1 lakh” respectively. To counter the above observations, it has been contended that actually 2 RPQs (dated 18.06.2018 and 05.07.2018) of the aforesaid client were collected and in the revised RPQ, his annual income and proposed investment were “greater than 15 lakhs” and “greater than 5 lakhs” respectively. On the first blush, the above contention of the *Noticees* may look convincing, however, considering the fact that the income and the proposed investment of a

client falling in the age of 55-60 years was increased upto 5 times within a period of less than 20 days (from 18.06.2018 to 05.07.2018), the Risk profiling methods adopted by the *Noticee no. 1* raises serious doubts about their authenticity. While this issue (of charging annual income of clients) is being dealt separately later in this Order, for now, even if it is assumed that the latest Risk Profiling (dated 05.07.2018) of the client (Mr. Vijay Soman) was correct, no justification whatsoever has been provided to explain as to why services worth of more than INR 19 lacs were sold to Mr. Vijay Soman in a period of only 6 months, whose proposed investment was greater than 5 lakhs and 20% of whose annual income was already allocated to pay his EMIs on debt. Further, no justification has been provided with regard to the fees charged to various other clients disproportionate to those clients' income and proposed divestment. For instance, a client named Mr. Mahaveer Prasad Bijarania, whose proposed investment was less than INR 1 lakh was sold advisory services worth of INR 4,35,752/-. Similarly, another client namely, Mr. Rakesh Kumar B earning an annual income between 3-5 lakhs, was sold 9 packages worth of 5,90,002 lacs during the period December 01, 2018 – December 26, 2018. It has been canvassed that the fees indicated in the above table no. 6 against the respective clients were not one time fees but were received over a period of time against various products and services rendered to them and the fees were received against those services rendered. In this respect, it has been submitted that the clients who have disclosed their annual income within certain ranges have voluntarily paid the fees higher than their disclosed sources of income and therefore, the observation about charging reasonably higher fees is not justified. The above argument also looks impressive at the first blush, on a closure scrutiny, I observe that the above argument looks hollow when it is confronted with the facts delineated in the above table, which reveal that over a brief period of time as small as 4 to 6 months, higher fees were charged to the clients even if the *Noticee no. 1* insist that such fees were consent of the clients. In my view, the spirit of *IA Regulations, 2013* does not permit an IA to charge unreasonable fees from clients, just because clients have agreed to bear such fees charged by the IA. When a

registered intermediary is acting as a bridge between the regulator and the securities market, it is burdened with a duty to protect the best interest of its clients, preserve integrity, transparency and fairness in the market which will ultimately facilitate development of securities market. It is highly and duly expected that an IA should work in the best possible manner to achieve the above by creating and reposing the faith of common investors in the market. The aforesaid instances of irregularities observed in the conduct of business by the *Noticee* no. 1 however clearly demonstrate that *Money Maker* was not fair in its dealing with the clients while selling advisory services to them and in view of the fees charged by it to its clients clearly seen to be disproportionate to the annual income and/ or proposed investment declared by the clients, the fees charged by it are liable to qualify as being “unreasonable” in terms of the letter as spirit of the *IA Regulations, 2013*.

Locking in clients by collecting advance service fee

31. *Interim Order* has further recorded instances wherein *Money Maker* has sold multiple subscriptions, of the same advisory product/ service to the same client even before the validity of the existing subscription of the same product/ service has ended or has even started, resulting into advance collection of fees for the subsequent subscription(s) even before the expiry or start of first subscription. *Interim Order* has further recorded that in such scenarios, if the client is dissatisfied/ doesn't want to continue with the IA after the first subscription has ended, he cannot do so as he has already been committed and made to pay for the subsequent subscriptions of the same product/ service in advance. Details of some such instances recorded in the *Interim Order* are tabulated below:

Table no. 7

Client Name	Date of invoice	Product/ Service	Period of product/ service	Amount (Rs.)
Mr. Aman	August 09, 2018	Option call &	August 13-27, 2018	4425/-

Mittal	August 17, 2018	Put@monthly	August 28 to September 5, 2018	2360/-
	August 25, 2018		September 6 -14, 2018	2065/-
	September 05, 2018		October 9-November 13, 2018	10030/-
	September 07, 2018		December 20, 2018 to May 20, 2019	34810/-
	August 28, 2018	Breakout Option @monthly	September 3-10, 2018	14750/-
	August 30, 2018		September 11-24, 2018	24780/-
	August 30, 2018		September 25- October 02, 2018	14986/-
	August 31, 2018		October 3-8, 2018	10000/-
	September 05, 2018		November 14-16, 2018	4956/-
	September 06, 2018		November 19 to December 07, 2018	35400/-
	September 07, 2018		December 10-18, 2018	14750/-
Mr. Suprio Nandy	Jun 18, 2018	Cash Bluechip @Qly	Jun 19 to Jul 16, 2018	12980/-
	Jun 23, 2018	Cash Bluechip @Qly	Jul 23 to Aug 12, 2018	8260/-
	Jun 25, 2018	Cash Bluechip @Qly	Aug 13 to Sep 12, 2018	15222/-
	Jul 11, 2018	Intraday Future @monthly	Jul 13 to Jul 27, 2018	5099/-
	Jul 12, 2018	Intraday Future @monthly	Aug 13 to Oct 01, 2018	21900/-
	Jul 25, 2018	Intraday Future @yearly	Aug 01 to Jul 31, 2019	78000/-

Mr. Vijay Soman	June 22, 2018	Jiyo Future Unlimited @monthly	June 25 to August 25, 2018	500000
	June 22, 2018	Jiyo Future Unlimited @monthly	August 27 to September 12, 2018	166666
	August 25, 2018	Jiyo Future Unlimited @monthly	September 03 to October 01, 2018	275176
	June 27, 2018	Jobbers Futures Pack @half yearly	July 02, 2018 to May 01, 2019	500000
	June 27, 2018	Jobbers Futures Pack @monthly	May 02, 2019 to July 02, 2019	55555
	July 05, 2018	Bullion+Metal+ Energy @ yearly	July 06, 2018 to October 25, 2019	111111
	August 28, 2018	Bullion+Metal+ Energy @ yearly	October 28, 2019 to October 26, 2020	100000
	March 9, 2018	Jobbers Future Pack (14 days)	March 12-28, 2018	41300
	March 19, 2018	Jobbers Future Pack (2 days)	March 29-30, 2018	5900
	March 20, 2019	Jobbers Future Pack (2 days)	April 2-4, 2018	5015
	March 23, 2018	Jobbers Future Pack (3 days)	April 5-10, 2018	8024
	March 23, 2018	Jobbers Future Pack (4 days)	April 5-16, 2018	11564
	March 31, 2018	HNI Future (20	April 2-23, 2018	20060

Mr. Mahaveer Prasad Bijarania		days)		
	April 6, 2018	HNI Future (monthly)	April 24-25, 2018	30090
	April 19, 2018	Galaxy Future Services (3 days)	April 20-25, 2018	25370
	June 5, 2018	Galaxy Future Services (1 days)	June 6-7, 2018	11092
	May 16, 2019	Galaxy Future Services (16 days)	May 17-June 1, 2019	125080
	May 25, 2019	Galaxy Future Services (8 days)	June 3-10, 2019	60062
	May 30, 2019	Galaxy Future Services (4 days)	June 11-14, 2019	32096
	May 5, 2018	HNI Future (4 days)	May 28-31, 2018	4000
	May 21, 2018	HNI Future (5 days)	June 1-7, 2018	5015
Mr.	Galaxy Cash service (12 days)	December 18, 2018	December 19-30, 2018	80000
	Galaxy Cash service (6 days)	December 18, 2018	December 31, 2018January 5, 2019	40000
	Galaxy Cash service (06 days)	December 22, 2018	January 7-12, 2019	40000
	Galaxy Cash service (20 days)	December 22, 2018	January 14- February 28, 2019	130000

Rakesh Kumar B	Galaxy Cash service (10 days)	December 26, 2018	March 1-11, 2019	66000
	Galaxy Cash service (4 days)	December 26, 2018	March 12-15, 2019	24000

32. From the above table, it is noticed that the fees for first subscription to the product/ service “Option call & Put@monthly” was received from a client namely; Mr. Aman Mittal on August 09, 2018, with the service to start from August 13 and to end on August 27. While this first subscription was active, the client has been sold two more subscriptions of the same product/ service. Similarly, just before September 06-14, 2018, when subscription for the product/ service “Option call & Put@monthly” is about to start, another subscription of the same product/ service is sold to him. Similar pattern can be observed from other clients mentioned in the table no. 7 above. and there is a ‘No Refund’ policy followed by the IA. Such practices of collecting advance payment from the clients, in effect forces the clients to continue with the services of the IA without any opportunity to sever ties with the IA in case of dis-satisfaction with the first subscription since the payment for the subsequent subscriptions have been already collected in advance with a no refund policy. Therefore, such conduct on the part of an IA does not appear to be in best interest of its clients.

Selling clients two products/ services having different names but the same features

33. I also note that the *Interim Order* has recorded instances wherein certain clients have been sold two or more products/ services bearing different names but with similar features covering overlapping service duration. A few examples as mentioned in the *Interim Order* are cited below:

Table no. 8

Client	Service	Period of product/ service	Product/ service features	Overlapping service
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Name				duration
Ms. Shamal Kadam	Intraday cash (90 days)	April 24-July 24, 2017	Both services cater to the Cash Segment and intraday calls. Target and stop loss are provided in both services.	20 days
	Jobbers Cash (20 days)	April 28-May 18, 2017		
	HNI option (30 days)	September 25-October 25, 2017	Both services cater to Options Segment and intra-day calls are provided. The number of targets and open positions may differ.	10 days
	Breakout Option (10 days)	September 27-October 6, 2017		
Mr. Rakesh Kumar B	Cash Blue chip (76 days)	December 3, 2018-February 19, 2019	Both services cater to the Cash Segment and intraday calls, with target and stop-loss are provided in both services.	15 days
	Jobbers cash Pack (15 days)	December 12-27, 2018		
Mr. Mahaveer Prasad Bijarania	HNI Future (monthly)	April 24-May 25, 2018	Both services cater to the Futures segment. Intraday calls are given and number of targets and lots to be traded are different.	3 days 1 day
	Galaxy Future Services (3 days)	April 20-24, 2018		
	HNI Future (5 days)	June 1-7, 2018		
	Galaxy Future Services (1 days)	June 6-7, 2018		

34. In this regard, *Notices* have submitted that customized package provided to various clients on the basis of specific need of the clients results into overlapping of services offered under various plans / packages. Further, *Notices* have also

submitted the distinctive features between various services offered by the *Noticee no. 1* under different heads, which are tabulated below:

Table no. 9

Basis of Difference	INTRADAY CASH & JOBBER CASH	CASH BLUECHIP & JOBBER CASH	HNI FUTURE & GALAXY FUTURE	HNI OPTION & BREAKOUT OPTION
No of Targets	Intraday Cash: 3 Jobber Cash: 1	Cash Blue chip: 3 Jobber Cash: 1	HNI Future: 3 Galaxy Future: 1	HNI Option: 3 Breakout Option: 1
Amount of target & Stop loss	Intraday Cash: There are 3 target of 1% each with Stop loss of 2% Jobber Cash: There is only 1 target of 0.50% each with Stop loss of 0.75%.	Cash Blue chip: There are 3 target of 0.50% each with Stop loss of 1%. Jobber Cash: There is only 1 target of 0.50% each with Stop loss of 0.75%.	HNI Future: There are 3 targets of 4000 each with Stop loss of 6000. Galaxy Future: There is 1 target of 25000 each with Stop loss of 35000.	HNI Option: There are 3 targets of 3000 each with Stop loss of 6000. Breakout Option: There is 1 target of 9000 each with Stop loss of 13500.
Risk return ratio	Intraday Cash: 1:1.50 on TGT 3 Jobber Cash: 1.50: 1 on TGT	Cash Blue chip: 1:1.50 on TGT 3 Jobber Cash: 1.50: 1 on TGT	HNI Future: 1:2 on TGT 3 Galaxy Future: 1.40:1	HNI Option: 1:2 on TGT 3 Breakout Option: 1.50:1

35. After going through the allegations in the *Interim Order* and the contentions put forth by the *Noticees* by way of an attempt to demonstrate the differences between the two overlapping services rendered to same client, I find that the contentions made by the *Noticees* are nothing but a feeble attempt to cover up their wrongdoings under the garb of showing technical differences of these products. For instance, it has been contended that two services viz. “Intraday Cash” & “Jobber Cash” are different from each other on the grounds of “No of Targets”, “Amount of target & Stop loss”, “Risk return ratio”, etc. However, the fact remains

that both the aforesaid two services relate to dealing in the products related to Equity / Cash segment of the Stock Exchange, wherein target and stop loss were provided in both the services. Similarly, both “HNI FUTURE” & “GALAXY FUTURE” services cater to the scrips listed under the F&O segment of the stock exchange. Therefore, from the records available before me, it can be seen that two or more products/ services catering to the same segment and having similar features covering/spread over overlapping periods were sold to same clients by the *Noticee no. 1* by presenting them with frivolous, minor technical distinctive characteristics which substances create no difference between their products/services. Such a practice of selling simultaneously similar packages to the same client, is not a fair dealing with the client and the same appears to have been done by the *Noticees* with an objective to generate more service fees at the expense of the client, in the name of providing diverse products/packages for investment to the clients.

36. The *IA Regulations, 2013* mandate that an IA needs to observe high standards of integrity, fairness, ethics and to act professionally. However, it emerges from the aforesaid discussions that the *Noticee no. 1* was focussed primarily on maximising its revenue and in order to accomplish the said mission, it was charging service fees not only disproportionate to the annual income/proposed investment of its clients but also charged fees for differently worded multiple products/advisory services provided to its clients which were essentially similar category of products/advisories, but camouflaged as different products. The aforesaid findings are also corroborated from the fact that the *Noticee no.1* was raising invoices even for those services which were scheduled to be started at a later stage, and also from the fact that services pertaining to same underlying were sold for the overlapping period to the clients. Under the circumstances, the *Noticee no. 1* is clearly found to have conducted itself in violation of regulation 15 (1), and the Clauses 1, 2, 6 and 8 of the Code of Conduct as mentioned in Schedule III read with regulation 15 (9) of the *IA Regulations, 2013*.

C. Risk profiling of clients

37. The *Interim Order* also records adverse observations pertaining to the risk profiling of the clients by *Money Maker*. For instance, for client Mr. Vijay Soman, a comparison of the risk profiles communicated to the client vide email dated 18.06.2018, and again vide email dated 05.07.2018, is given below:

Table no. 10

Q. No.	Question	Answer in risk profile communicated vide email dated June 18, 2018	Answer in risk profile communicated vide email dated July 05, 2018
3	Proposed capital for trading	Less than 1 lakh	Greater than 5 lakhs
5(a)	Which of these statements would best describe your attitudes about the next three years' performance of this investment?	I have a hard time tolerating any loss	I can tolerate a loss
6	Annual Income details:-	3-5 lakh	Greater than 15 lakh
11	Approx. Value of assets held like property, FD, Shares, Mutual Fund etc.	Below 10 lakh	30-50 lakh
12	Market Value of portfolio held like Shares, Mutual Fund & Other Financial Securities	Less than 3 lakhs	Greater than 10 lakh
17	What is your experience with Equity market trading?	Very less	Extensive
18	What is your experience with Commodity market / Derivative (Future/Option/Currency) market trading?	Moderate	Extensive

38. It can be seen from the above table that *Money Maker* has revised the risk profile of the client (Mr. Vijay Soman) merely within 20 days from the date of the original risk profiling done by it. From the revised risk profile, it is observed that the answers to questions pertaining to income, proposed investment, experience, etc., are vastly different from what was answered in the original risk profiling dated June 18, 2018. For example, the total annual income of the client has changed from INR 3-5 lacs to greater than Rs.15 lacs within a period of 20 days. Similarly, the experience of the aforesaid client in the equity market trading changed from 'very less' to 'extensive'. All of the changes indicated a significant enhancement in the financials and risk appetite of the client. However, it is observed from the available records that the *Noticee no. 1* has not collected any additional information from the client to justify the sudden change in the risk appetite and financials of the client.

39. Similarly, it is noticed from the RPQ of the client (Mr. Aman Mittal) that his primary source of income is mentioned as "Business", while his occupation is mentioned as "Student". It is observed that the client was 20 years old when his risk profiling was carried out. As the primary source of income is "Business", the IA should have ensured that the details in the occupation field were correctly captured more so when the client was a student at that point of time.

40. I note that the *Noticees* have simply brushed aside the aforesaid illustrations made in the *Interim Order* and have preferred to remain silent without offering any comment on the issue to explain as to how the income of the investor (Mr. Vijay Soman) increased to above INR 15 lakhs within a period of 20 days or so, from an income level of INR 3-5 lakhs. Another glaring infirmity noticed is that even the prior investment experience of the investor in 'Equity Market trading' is changed from 'Very less' to 'Extensive' that too in 'Commodity market / Derivative (Future/Option/Currency) market trading', it was changed from 'Moderate' to 'Extensive'. The motive to manipulate/modify such risk profile can be deduced and linked to the details of the products sold every time such risk profile is

modified/manipulated. For the aforesaid investor, it can be seen from the *Interim Order* that he was sold packages of more than INR 19 lakhs and to justify the said acts, *Noticee no. 1* has relied upon such modification in risk profiling of the said client as highlighted above. Therefore, every such modification / manipulation in risk profiling of clients by the *Noticee no. 1* is seen to have resulted in changes in the categorisation of the risk appetite of the clients and accordingly, a product/package from completely unrelated realm is sold to such client based on such modified/manipulated risk profile of the client. Similarly, there is no explanation as to why occupation of an investor (Mr. Aman Mittal) whose primary income source is supposed to be business, was mentioned as “Student”.

41. As already noted earlier in this Order, the regulation 16 (a) of the *IA Regulations, 2013* lists out 6 information parameters which an IA essentially needs to elicit/obtain from its clients for appropriate assessment of the risk profile and risk appetite of the clients, in order to provide investment advice commensurate with such risk profile. The said parameters include age, investment objectives, income details, existing investments/assets, risk appetite and liabilities/borrowing details etc. The regulatory purpose to mandate the IAs to obtain such specific but basic information from the prospective clients is to emphasise on the regulatory intent that any person engaged in the activities of rendering investment advisory services is required to have clear picture about the investment objective, risk taking abilities, past history of investments done and overall financial goals & strength of each client, so as to be able to customise an investment advice as per the investment goal and requirement of the client, meaning thereby, by assessing and evaluating such basic minimum information about a client, an IA may be in a better position to suggest a product which would converge with the investment objective of the client. The aspect of correct assessment of risk is the most crucial factor for rendering useful investment advice to a client hence, ignoring or diluting such a critical factor by an IA would render the whole purpose of creating an ecosystem of investment advisers for the securities market completely nugatory. It

needs specific emphasis here that the present proceedings against the *Noticees* have been initiated on account of non-compliance with regulatory provisions specifically envisaged for the purpose of guidance of and adherence by the Investment Advisors. The essence of its compliances are mandatory irrespective of the fact whether such non compliances result in causing any actual loss to any investor or not. It is trite law that when a rule, law, regulation demands for certain things to be done in a particular manner by an Intermediary of the Securities Market, those acts or things are required to be done in that specified manner only. Any deviation from complying with the rules or any action deviant from the manner prescribed under such rules and regulations, would be a sufficient ground for inviting remedial or penal action against such deviation or non-compliances.

42. It is evident that the observation made in the *Interim Order*, were recorded on a *prima facie* basis at that point in time. However, considering the unsubstantiated and feeble responses now being offered in response to those observations by the *Noticees*, I can hold with assurance that the aforesaid findings of the *Interim Order* are in fact based on cogent and uncontroverted evidence to establish that *Money Maker* was indeed not complying with the risk profiling requirement in spirit of the regulations. In fact, as it turns out now, I find that in the name of risk profiling, only empty formalities to tick out a checklist was being carried out by the *Noticees*, which can be best termed as a sham compliance disregarding true essence of the regulatory requirements as prescribed under the *IA Regulations, 2013*. Besides, I observe that *Money Maker* has gone too far in violating the sanctity of its fiduciary role to behave in a fair & transparent manner vis-à-vis its clients by selling multiple products with similar features repeatedly to the same clients, by frequently changing their risk profiles and also by offering the same product repeatedly to the same client even during the validity of tenure of the previous product. Therefore, I have been left with no other option but to say that such transgressions on the part of the *Noticee no. 1* are in violation of

regulation 16(e) and Clauses 1, 2, 5 and 8 of the Code of Conduct as mentioned in Schedule III read with regulation 15(9) of the *IA Regulations, 2013*.

43. I further note that the *Interim Order* also alleges wrongdoings on part of *Noticee no. 1* while acting as an IA in violation of *PFUTP Regulations, 2003*. In this regard, I have to mention that by following such an unscrupulous business practice (as discussed in the foregoing paragraphs of this Order), where the interest of its clients are seen to have been blatantly side lined and by disregarding the interests of investors of the securities market in general, *Noticee no. 1* who is a SEBI-registered Investment Advisor, has acted in a deceitful manner only with a motive to induce the clients to buy their investment products/packages irrespective of their risk taking abilities, for maximising its revenue. It is also observed that all the findings as recorded above are based on cogent evidence, and factual support with tangible illustrations which have been marshalled very well into the *Interim Order* to point out glaring infirmities in the conduct of the *Noticee no. 1*, which the *Notices* have not been able to controvert. For instance, not conducting risk profiling efficiently, manipulating their risk scores, making them buy investment products contrary to their risk appetites in a fraudulent manner, selling multiple products of same features to same client during same duration, etc. speak for themselves about the manipulative acts, misrepresentations, inducements and omissions exhibited by the *Noticee no. 1* which sufficiently suggest that the *Noticee no.1* has acted in terms of an artificial device that was invariably deployed by it while dealing with the innocent clients, so as to create all possible inducements in the minds of the gullible investors to seek their investment advice under different packages that were not suitable to their risk profile or investment goals. Under the circumstances, I am constrained to hold that the *Noticee no. 1* has also violated provisions of Section 12A(a), (b) and (c) of the *SEBI Act, 1992* and regulations 3 (a), (b), (c) and (d) of the *PFUTP Regulations, 2003*.

44. As the acts of the *Noticee no. 1* has been found to be in violation of the *IA Regulations* and *PFUTP Regulations, 2003*, I will now move to evaluate the roles

and liabilities of the other *Noticees*, viz., *Noticees nos. 2 to 10*, who were the Directors of the *Noticee no. 1*. I note that the Interim Order has recorded the following status of the *Noticees no. 2 to 10* with regard to their Directorship in *Noticee no. 1*:

Table no. 11

Name	Original date of appointment	Date of Cessation	Designation
Chandni Paryani (<i>Noticee no. 2</i>)	March 20, 2019	-	Current Director
Abhisekh Tiwari (<i>Noticee no. 3</i>)	September 1, 2019	-	Current Director
Shashank Mishra (<i>Noticee no. 4</i>)	November 18, 2011	July 8, 2017	Past Director
Tanveer Ahmed (<i>Noticee no. 5</i>)	November 18, 2011	July 8, 2017	Past Director
Neelesh Kumar Tripathi (<i>Noticee no. 6</i>)	March 31, 2017	August 31, 2019	Past Director
Devendra Kumar Tripathi (<i>Noticee no. 7</i>)	March 31, 2017	October 11, 2018	Past Director
Nimish Shrivastav (<i>Noticee no. 8</i>)	March 31, 2017	August 14, 2018	Past Director
Amita Jain (<i>Noticee no. 9</i>)	July 8, 2017	June 6, 2019	Past Director

Divya Sharma (<i>Noticee</i> no. 10)	July 8, 2017	September 11, 2019	Past Director
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45. I note that the *Noticees* have in their defence relied on the observations made in the SEBI order dated 28.05.2021 in the matter of *Tatia Global Venture Limited* to contend that at the relevant point in time they could not be held vicariously liable for the violations committed by *Money Maker*. In this regard, it is important to note that the violations alleged in the *Interim Order* pertains to period starting from 01.04.2018, however the said acts/misconduct continued till 31.03.2019, i.e. after the aforesaid amendment dated 08.03.2019 was brought in the *SEBI Act, 1992*. Therefore, the observations of SEBI in order of *Tatia Global Venture Limited* are not applicable in the present proceedings.

46. Notwithstanding the above, it is imperative to state that being an artificial person, a company can function only as per the directives of and under the superintendence of its Board of Directors which comprises natural persons with appropriate abilities and expertise to run the company. The Board of Directors is the source of the wisdom and thus, performs those functions for a company that are performed by a brain for an individual person. In view of the same, all commission and omissions on part of a company have to be necessarily attributed to its Directors who ran the affairs of such a company at the time of the alleged violations. I may make a reference to the judgment of Hon'ble Supreme Court of India in *N. Narayanan Vs. Adjudicating Officer, SEBI* (2013) 12 SCC 152, where Hon'ble Court have *inter alia* observed that: "33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in *Official Liquidator v. P.A. Tendolkar* (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He

cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”.

47. It has also been contended that *Noticee no. 2* and *3* were introduced as Directors of *Noticee no. 1* with effect from 20.03.2019 and 01.09.2019 respectively and therefore, the findings of *Interim Order* which is based on the Inspection Period (01.04.2018-31.03.219) are not applicable on them. In this regard, it is pertinent to mention here that nothing has been submitted by these *Noticees* to demonstrate if any steps have been taken by them to prevent *Money Maker* from committing the violations as discussed in the foregoing paragraphs or to remove the irregularities from its function even after the passing of the *Interim Order*. I also note from the records that the complaints against the *Money Maker* were lodged by its clients on SEBI SCORES portal and as per the submissions advanced, as on 30.06.2022, there are 18 complains pending against the *Noticee no. 1*. Being the present directors in the Company, it was the primary responsibility of *Noticees no. 2 and 3* to take necessary actions in resolving such complaints. In my opinion, these directors have failed to fulfil their responsibility as the directors in *Money Maker* and are equally liable for the deeds and misdeeds of the *Noticee no.1* as an Investment Advisor.

48. I note that the *Noticees no. 2, 6, 7, 8, 9 and 10* were Directors of *Noticee no. 1* during the relevant period of time. I note that in the present proceedings, the aforesaid *Noticees* have not disputed their Directorship with *Noticee no. 1* as recorded in the *Interim Order*. They have however submitted that *Noticee no. 6* was the HR Executive in *Noticee no. 1* at the relevant point of time looking into work related to Human Resource Management, while *Noticee no. 7* was the Admin Executive responsible for work related to housekeeping management, water supply, etc. Similarly, it has been submitted that *Noticee no. 8* was the HR manager and was responsible for PF, ESI and salary structure of the employees and further, *Noticee no. 9* was handling client queries and service related issues. Though the aforesaid *Noticees* have made claims regarding the specific different roles discharged by them in the *Noticee no. 1*, no additional evidences have been brought

on record to support their contention that they were not involved or associated in any manner with the function of providing Investment Advisory services to the clients of the *Noticee no. 1*. Infact, from the records, it appears that the aforesaid claims put forth by the *Noticees* explaining their assigned roles in the affairs of *Noticee no.1* are specious contentions without any supporting facts or evidence to rely upon. Moreover, various RPQs which includes risk profiling of the clients and the invoices sent to the clients are found to have signature of *Noticees no. 6 and 7*, which shows their apparent association and involvement in activities of IA of the *Noticee no.1*. Therefore, the claims made by the *Noticees* to suggest that they were in charge of various tasks except for investment advisory work, have no legs to stand on.

49. It has been further submitted that *Noticee no. 4 and 5* have resigned as Directors of *Noticee no. 1* with effect from 08.07.2017 and therefore the findings of *Interim Order* which is based on the Inspection Period (01.04.2018-31.03.219) are not applicable to them. In this regard, it is pertinent to note that the aforesaid *Noticees* were directors in *Noticee no. 1* when the investors, mentioned in the *Interim Order*, were on-boarded as clients of *Money Maker* i.e., they were Directors during the period when the risk profiling information was being collected telephonically, the RPQ was being sent to the clients, the fees were being collected from the client and the investment advisory service was being given to the clients. It is also observed that certain investors had become clients of *Money Maker* prior to the start of the inspection period but during the tenure of these Directors. For e.g., Ms. Shamal Kadam became a client of *Money Maker* in April 2017, as can be evidenced from the first invoice in her name, which is dated April 20, 2017. It is observed that this client has been charged fees which were disproportionate to her income/ proposed investment and that the same has occurred during the tenure of these Directors. Similarly, Mr. Swaminathan Karthik became a client in May 2017. Infact, I note that various RPQs and the invoices have been signed by *Noticee no. 4*, which shows their involvement in providing IA services to such clients.

50. It is an established principle of legal jurisprudence that the Directors are the repository of wisdom and brains behind all acts of a company which is merely an artificial person. I note that in the present proceedings, the aforesaid *Noticees* have neither taken any ground that they were not aware of the acts which have been imputed as the basis of the alleged violations, nor have they disputed their Directorship with *Noticee no. 1* and hence, the *Noticees nos. 2 to 10* are liable to be held equally liable for the misdeeds and misconduct of the *Noticee no.1* as an investment advisor as found to be established in this Order. Therefore, the acts of the *Noticees no. 2 to 10* can be said to have resulted into violation of regulation 15 (1), 15 (9), 16 (e), 17 of *IA Regulations, 2013* and the Clauses 1, 2, 4, 5, 6, 8 and 9 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of *IA Regulations, 2013* read with Section 12A(a), (b) and (c) of the *SEBI Act, 1992*, regulations 3 (a), (b), (c) and (d) of the *SEBI PFUTP Regulations, 2003*.

51. Before parting away, I must note here that an entity which is granted registration as an investment adviser, plays a crucial role in bridging the gap between the investment avenues and the resources that an investor has in her command. Based on his/its expertise & acumen to select a product appropriate to the investment need of a naive person aspiring to become an investor in securities market, an investment adviser helps such investor to achieve the level of investments what he, she on his own may not be in a position to achieve. The consideration for rendering such a service to advise and hand hold an innocent investor should be as just as deserved by the investment adviser. As the arena of investment is fundamentally vast and complex, the *IA Regulations, 2013* have prescribed broad checks and balances so as to keep the interest of the investors protected from any kind of untoward treatment in the hands of unscrupulous Investment Advisors. The Code of Conduct spells out the general duties of the investment adviser to act honestly and fairly so as to serve the best interest of the clients in a fiduciary manner and to keep intact the integrity of securities market. The investment adviser ought to act with due care and skill by paying highest

regard to the risk tolerance level of the investor and by objectively arriving at the suitability of the product proposed to be suggested to different investors having different levels of risk appetites. Thus, an ecosystem needs to be developed in a way, wherein advisory services are rendered in exchange of a fee from the client/investor, however, the interest of the investor is always kept as paramount. However, as discussed above, *Noticee no. 1*, by its various manipulative acts and omissions has acted in gross violation of the provisions of the *PFUTP Regulations, 2003* and the *IA Regulations, 2013*. In my considered view the presence of such *Noticee* who, by misusing the registration granted by SEBI, has disregarded the basic level of propriety and trust reposed in it and has acted in a manner only to increase its revenue by ignoring the extant norms, is unwarranted. However, while deciding the directions in this regard, I cannot ignore the fact that *Noticee no. 1* and its present directors viz. *Noticees no. 2 and 3* have also submitted certain documents to demonstrate that the amount of fees collected from various clients (as mentioned at table no. 2 of this Order), including from the ones in respect whom findings have been recorded in the *Interim Order* as well as this Order, have been substantially refunded by them. Further, I also note that the *Interim Order* was passed in January 2021 and the past directors of *Noticee no. 1* viz. *Noticees no. 4 to 10* have already undergone a debarment of almost 2 years since the passing of the *Interim Order*, which, in the facts of the matter and considering the period of their association with *Company*, their involvement in the alleged violation as directors on the board of *Money Maker* and the fact that they are no more the holding the Directorship of the *Company*, is a sufficient period of debarment for these past directors to meet the end of justice.

Directions

52. In view of the above, I find it appropriate that in order to achieve the avowed object of the *SEBI Act, 1992* and to protect the interest of investors, powers conferred upon me under Sections 11(1), 11(4) and 11B (1) read with Section 19 of

the Securities and Exchange Board of India Act, 1992 be exercised and accordingly, I hereby pass the following directions:

- (a) The *Noticee no. 1* is directed to resolve the complaints pending against it in the SCORES including refund / repayment, if any, and otherwise, within the period of 30 days from the date of this Order.
- (b) The *Noticees no. 1 to 3* are prevented from selling his assets, properties and holding of mutual funds/shares/securities held by him in demat and physical form except for the sole purpose of making the refunds as directed above. Further, banks are directed to allow debit from the bank accounts of the *Noticees no. 1 to 3*, only for the purpose of making refunds to the clients/ investors/ complainants who were availing the investment advisory services from the *Noticee no. 1*.
- (c) After completing the aforesaid repayments/resolution of complaints, the *Entity no. 1* shall file a report of such completion with SEBI addressed to the “*Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai -400051*”, within a period of fifteen (15) days, after completion of thirty (30) days from the coming into force of the directions at paragraph 52 (a) above, duly certified by an independent Chartered Accountant and the direction at paragraph 52 (b) above shall cease to operate upon filing of such report on resolution of complaints/ completion of refunds to complainants.
- (d) The *Noticees nos. 1 to 3* are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner whatsoever, for a period of six (06) months from the date of this order or till the expiry of six (06) months from the date of resolution of complaints/completion of refunds to complainants as directed in paragraph 52 (a) above, whichever is later.

- (e) Obligation of the *Notices no. 1 to 3*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Notices* in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
- (f) The *Notices no. 1 to 3* are directed to provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 7 working days from the date of receipt of this Order.
- (g) The proceedings qua *Notices no. 4 to 10* are disposed of without any directions in line with the observations made at paragraph 51 of this Order.

53. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Notices* shall remain frozen.

54. The direction for refund, as given in paragraph 52 (a) above, does not preclude the clients/investors of the *Notices* from pursuing the other legal remedies available to them under any other law, against the *Notices* for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

55. This Order is without prejudice to any other action that SEBI may initiate.

56. This Order shall come into force with immediate effect.

57. A copy of this Order shall be served upon the *Notices*. A copy of this Order shall also be forwarded to all the recognized Stock Exchanges, Depositories, Banks

and Registrar and Transfer Agents for necessary compliance with the above directions.

Sd/-

DATE: DECEMBER 19, 2022

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA